IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 361 of 1991

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JITENDRAKUMAR K NOTICEWALA & Ors.

Versus

STATE OF GUJARAT & Ors.

Appearance:

MR S TRIPATHY for Petitioners

MR KT DAVE AGP for Respondents No. 1-3

Respondents No. 4-9 Served

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 06/02/2002

ORAL JUDGEMENT

Heard the learned advocates.

The petitioners challenge the judgment and order

dated 21st November, 1990 passed by the State Government [Additional Chief Secretary (Appeals), Revenue Department] in Revision Application No. 21 of 1987 preferred by the respondents nos. 4 to 9 herein. The facts leading to the present petition are as under :-

The dispute pertains to the land bearing survey no. 141 admeasuring 5059 sq.mtrs. of village Katargam, Taluka-Choryasi, District-Surat. It appears that the said land was given to one Shri Balvantrai Ranchhodbhai Desai, the respondent no. 4 herein under the Bombay Tenancy & Agricultural Lands Act, 1948 [hereinafter referred to as, `the Act'], subject to the restrictions contained in section 43 thereof. Pursuant to the decree of the Civil Court passed on 25th April, 1981, the said land was partitioned amongst six persons i.e., the above referred Balwantrai Ranchhodbhai Desai, his widowed mother and his four sons. Revenue entry no. 6684 recording the said partition was made in the village records on 25th April, 1981 and was certified on 30th May, 1981. Since then, it appears that the said owners, the respondents nos. 4 to 9 applied to the District Collector, Surat for permission for making non-agricultural use of the said lands under Section 65 of the Bombay Land Revenue Code [hereinafter referred to as, `the Code']. Such permission was granted on 19th October, 1981 on condition inter alia that the said lands being of new tenure, no construction shall be commenced before getting the land converted into old tenure land and before payment of premium. The said respondents nos. 4 to 9 had, on 20th August, 1981, made application to the Prant Officer, Choryasi for conversion under section 43 of the Act. It further appears that the said respondents nos. 4 to 9 did not comply with the terms and conditions of the NA permission in as much as without obtaining order under section 43 of the Act or paying premium thereof, the said respondents plotted the land and started construction thereon. After partial construction, the said sub-plots of land appear to have been sold to the present petitioners under registered sale deeds during the years 1982 and 1983. Since then, the petitioners have completed the construction thereon and have been residing there.

The application made under section 43 of the Act was decided by the Prant Officer, Choryasi on 30th September, 1985. The Prant Officer, Choryasi observed that the applicants had made construction before the order under section 43 was made and without paying the premium thereof. He further observed that the plots of land were sold to various purchasers without obtaining

the permission of the competent authority under the Urban Land [Ceiling & Regulation] Act, 1976. He, therefore, rejected the application dated 20th August, 1981. The Prant Officer also directed a copy of the said order to the District Collector, Surat and observed that there being violation of section 32-R and 43 of the Act, the proceedings under section 84 (C) of the Act was required to be initiated. Feeling aggrieved, the respondents nos. 4 to 9 preferred Appeal No. 263 of 1986 before the District Collector, Surat. The District Collector, Surat under his order dated 13th October, 1987 partly allowed the said appeal. The order of the Prant Officer, Choryasi rejecting the application dated 20th August, 1981 was quashed and set-aside. The Prant Officer was directed to determine the premium as on 19th October, 1981 and to recover the same. The Deputy Collector, Choryasi Prant was also directed to take the revenue entries in respect of the said land survey no. 141 which may not have been made in accordance with law into revision. Feeling aggrieved, the respondents nos. 4 to 9 preferred the above referred Revision Application no. 21 of 1987 before the State Government. In course of hearing, the State Government was of the opinion that the petitioners who were in possession of the said plots of land and the construction made thereon ought to be given notice and an opportunity of hearing. Accordingly, notices were issued to the petitioners. The petitioners entered their appearance through the learned advocate and also lodged their objections. After hearing the petitioners and the respondents nos. 4 to 9, the State Government under its order dated 21st November, 1990 allowed the said Revision Application and set-aside the order dated 13th October, 1987 of the District Collector, Surat. Feeling aggrieved, the petitioners have preferred the present petition.

Mr. Tripathy has submitted that for the period from 1st February, 1978 till 12th June, 1985 section 121 of the Gujarat Town Planning & Urban Development Act, 1976 was in force, and therefore, the provisions of the Act shall not apply to the said land. He has submitted that the said land was covered under the Development Plan/Town Planning Scheme and was, therefore, exempted from the application of provisions of the Act. He has next contended that in any view of the matter, any action initiated against the petitioners in the year 1990 was grossly belated and requires to be quashed and set-aside. he has also opposed the suggestion that the premium under section 43 of the Act, as ordered by the District Collector, Surat under his order dated 13th October,1987

may be determined and the petitioners may be called upon to pay the same. He has strenuously urged that the petitioners had made proper inquiries prior to the purchase of the plots of land and the said plots of land were purchased after obtaining title clearance certificate. The petitioners' title are, therefore, clear and they cannot be asked to pay premium under section 43 of the Act. It is the respondents nos. 4 to 9 who should pay such premium; if payable.

Be that as it may, I am of the view that the petition is wholly misconceived. As recorded hereinabove, what has been done is the application made by the respondents nos. 4 to 9 for determination of premium under section 43 of the Act has been rejected. No order adverse to the petitioners has been made as yet. No cause of action has, therefore, been accrued to the petitioners. Any attempt to foreclose the proceeding under section 84-C of the Act which may be initiated hereafter is premature and no relief in that regard can be granted at this stage.

In above view of the matter, the petition is dismissed. Rule is discharged with costs. Interim relief is vacated.

{Ms. R.M Doshit, J.}

Prakash*